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5 Attorney for Plaintiffs

6  
7 **UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF NEVADA**

9	GARETH PITTS, Individually	)	Case No.: 09-CV-0940-RCJ-
	and on behalf of others	)	RJJ
10	similarly situated,	)	
		)	
11	Plaintiffs,	)	PLAINTIFF'S FIRST AMENDED
		)	COMPLAINT
12	vs.	)	
		)	
13	TERRIBLE HERBST, INC.	)	
		)	
14	Defendants.	)	
		)	

15  
16  
17 **CLASS ACTION COMPLAINT FOR VIOLATION**  
18 **OF STATE STATUTES AND BREACH OF CONTRACT**

19 COMES NOW Plaintiffs, GARETH PITTS, Individually and on behalf  
20 of others similarly situated, by and through his attorney, Leon  
21 Greenberg Professional Corporation, as and for a Complaint for  
22 Violation of State Statutes and Breach of Contract and Damages and  
23 Equitable Relief alleges as follows:

24 **PARTIES AND PRELIMINARY STATEMENT**

25 1. The plaintiff is a resident of Clark County, Nevada, and  
26 current employee of the defendant.

27 2. The defendant TERRIBLE HERBST, INC. is a corporation  
28

1 existing and established pursuant to the laws of the State of Nevada  
2 with its principal place of business in the County of Clark, State  
3 of Nevada.

4 3. This case was originally filed in the Eighth Judicial  
5 District Court of the State of Nevada, Clark County, and plaintiff  
6 alleges such Court has proper jurisdiction over the claims presented  
7 herein.

8 4. Subsequent to its commencement, this case was removed to  
9 this Court and plaintiff denies that this Court has proper  
10 jurisdiction over this case and does not concede such jurisdiction  
11 is proper by filing this Amended Complaint. Plaintiff concedes that  
12 if this Court has proper jurisdiction over this case it is properly  
13 venued in this Court.

14 5. The acts complained of herein took place in Nevada, and  
15 primarily in Clark County.

16 THE PROPOSED CLASS CLAIMS AND PARTIES

17 6. There are numerous persons who are similarly situated to  
18 the named plaintiff in respect to the named plaintiff's claims in  
19 that such similarly situated persons, like the named plaintiff,  
20 performed substantial work, labor and services for the defendant and  
21 did not receive the compensation required by the various Nevada  
22 Statutes alleged herein, and/or failed to receive the compensation  
23 required by their contracts of employment and as detailed hereafter  
24 such circumstances warrant the granting of class certification on  
25 such claims of the plaintiff pursuant to N.R.C.P. Rule 23.

26 7. That the persons similarly situated to the named plaintiff  
27 and described in paragraph 6 constitute a class of persons that are  
28 so numerous that joinder of all such persons individually is

1 impractical, such class consisting of all hourly wage earners of the  
2 defendant who were injured by the defendant's violations of Nevada's  
3 statutes, and defendant's breach of contract, that are detailed  
4 herein.

5       8. There are questions of law and fact common to the plaintiff  
6 class that predominates over any questions affecting only individual  
7 members of the plaintiff class, specifically whether the defendant  
8 has any legal obligation to the class members under Nevada Law and  
9 if so what is the extent of such obligation.

10       9. The claims of the named plaintiff are typical of the  
11 claims of the above described plaintiff class, in that the interests  
12 of the named plaintiff are co-extensive with the interests of the  
13 other members of the plaintiff class, there is a lack of adverse  
14 interests between the named plaintiff and the other members of the  
15 plaintiff class, and common questions of law and fact exist as to  
16 the claims of the named plaintiff and the claims of the members of  
17 the plaintiff class.

18       10. The named plaintiff will fairly and adequately protect the  
19 interests of the plaintiff class and serve as an adequate  
20 representative plaintiff on behalf of the plaintiff class.

21       11. A class action pursuant to N.R.C.P. Rule 23 is superior  
22 to other available methods for the fair and efficient adjudication  
23 of the plaintiff class members' claims.

1 AS AND FOR A FIRST CLAIM FOR RELIEF ON  
2 BEHALF OF PLAINTIFF GARETH PITTS AND  
3 ALL PERSONS SIMILARLY SITUATED  
PURSUANT TO NEVADA'S LABOR LAW

4 12. Plaintiff repeats and reiterates each and every allegation  
5 previously made herein.

6 13. The named plaintiff brings this First Claim for Relief  
7 against the defendant pursuant to NRS § 608.250, for non-payment of  
8 minimum wages, and NRS § 608.018, for non-payment of overtime wages  
9 on behalf of himself and the proposed plaintiff class members.

10 14. Pursuant to NRS § 608.250 the plaintiff was entitled to  
11 an hourly minimum wage and pursuant to NRS § 608.018 plaintiffs were  
12 also entitled to the payment of wages at time and one-half their  
13 normal hourly rate when they worked in excess of 8 hours a day or 40  
14 hours a week, and the plaintiffs were not paid such required wages  
15 because they were denied any payment whatsoever for certain periods  
16 of time that they worked for the defendant and/or because they were  
17 not paid overtime wages calculated in compliance with the  
18 requirements of the Nevada law.

19 15. The defendant's actions in violating NRS § 608.250 and NRS  
20 § 608.018 were deliberate and repeated, the defendant having in the  
21 last five years been subjected to litigation over exactly such  
22 practices and despite such litigation and defendant's awareness of  
23 the illegality of such practices defendant has willfully continued  
24 such practices; defendant will continue to engage in such practices  
25 irrespective of an award of damages to the plaintiff class as the  
26 defendant profits greatly by such violations of law even after being  
27 required to pay damages for such violations of law in repeated  
28 litigations; and as a result of such circumstances an award of

1 damages to the plaintiff class would be insufficient relief and the  
2 plaintiff class to protect themselves from the ongoing and  
3 continuing injury they will otherwise sustain from the defendant's  
4 conduct should receive suitable equitable relief, in the form of a  
5 preliminary and permanent injunction, the appointment of a limited  
6 receiver or Court supervised monitor, and such other appropriate  
7 measures of equitable relief as are necessary to insure defendant  
8 complies with such statutes.

9       16. The named plaintiff on behalf of himself and the proposed  
10 plaintiff class members, seeks, on this First Claim for Relief, a  
11 judgment against defendant for minimum wages and/or overtime wages,  
12 such sums to be determined based upon an accounting of the hours  
13 worked by, and wages actually paid to, the plaintiff, and also seeks  
14 an award of attorney's fees, interest and costs, and suitable  
15 equitable relief, as provided for by Nevada Law.

16                   AS AND FOR A SECOND CLAIM FOR RELIEF  
17                   ON BEHALF OF PLAINTIFF GARETH PITTS  
18                   AND ALL PERSONS SIMILARLY SITUATED  
19                   UNDER NEVADA LAW FOR BREACH OF  
20                   CONTRACT

21       17. Plaintiff repeats and reiterates each and every allegation  
22 previously made herein.

23       18. The named plaintiff brings this second claim for relief  
24 for breach of contract under Nevada law on behalf of himself and the  
25 alleged class of similarly situated persons.

26       19. The named plaintiff entered into an agreement and/or  
27 contract with defendant whereby plaintiff agreed to perform certain  
28 services for defendant and defendant agreed to pay plaintiff \$8.00  
for each full hour and a pro rata fractional amount of \$8.00 for

1 each partial hour that he worked.

2       20. The contract entered into between the plaintiff and the  
3 defendant detailed in paragraph 19 was the same form of contract  
4 entered into by all of the class members with the defendant, except  
5 that, upon information and belief, the hourly rate promised by the  
6 defendant to some of the class members was not \$8.00 an hour but  
7 some other amount, but all of such contracts were for payment of  
8 wages based upon an hourly amount for full hours worked and a pro  
9 rata fraction of the same such hourly amount for each partial hour  
10 worked.

11       21. The defendant breached its contract with the plaintiff by  
12 failing to pay the plaintiff \$8.00 for every full hour worked and/or  
13 a pro rata fractional amount of \$8.00 for each partial hour that he  
14 worked, as defendant had promised under the parties' contract, as  
15 the plaintiff worked certain hours or fractions of hours for which  
16 he was paid nothing whatsoever by defendant.

17       22. The defendant also breached its contracts with the members  
18 of the similarly situated class in the same fashion as is alleged in  
19 paragraph 21 in respect to the named plaintiff, although some of  
20 those members of the similarly situated class were promised under  
21 their contracts with the defendant an hourly rate that was not  
22 \$8.00, in that such similarly situated class members worked certain  
23 hours and/or fractions of hours for which they were paid nothing  
24 whatsoever by defendant.

25       23. The defendant's actions in breaching its contracts with  
26 the plaintiff and the class members were deliberate and repeated,  
27 the defendant having in the last five years been subjected to  
28 litigation over exactly such practices and despite such litigation

1 and defendant's awareness of the illegality of such practices  
2 defendant has willfully continued such practices; defendant will  
3 continue to engage in such practices irrespective of an award of  
4 damages to the plaintiff class as the defendant profits greatly by  
5 such breaches of contract even after being required to pay damages  
6 for such breaches in repeated litigations; and as a result of such  
7 circumstances an award of damages to the plaintiff class would be  
8 insufficient relief and the plaintiff class to protect themselves  
9 from the ongoing and continuing injury they will otherwise sustain  
10 from the defendant's conduct should receive suitable equitable  
11 relief, in the form of a preliminary and permanent injunction, the  
12 appointment of a limited receiver or Court supervised monitor, and  
13 such other appropriate measures of equitable relief as are necessary  
14 to insure defendant complies with its contracts with the plaintiff  
15 and the class members.

16       24. The named plaintiff on behalf of himself and the proposed  
17 plaintiff class members, seeks, on this Second Claim for Relief, a  
18 judgment against defendant for the unpaid wages owed to the named  
19 plaintiff and the plaintiff class members as a result of the  
20 defendant's breach of its contracts with the named plaintiff and the  
21 plaintiff class members, and also seeks an award of attorney's fees,  
22 interest and costs, as provided for by Nevada Law.

23  
24       WHEREFORE, plaintiff demands the relief on each cause of action  
25 as alleged aforesaid, together with costs, interest, equitable  
26 relief, attorney's fees and such other relief as the Court deems  
27 just.

28

1           Plaintiffs demand a trial by jury on all issues so triable.

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3       Dated this 11th day of August, 2011.

4                               Leon Greenberg Professional Corporation

5   /s/

6                               By: \_\_\_\_\_

7                               LEON GREENBERG, Esq.

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